



Kittitas County
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision

For Ecology Use Only	
Received:	DEPT. OF ECOLOGY Received JAN 05 2005 CENTRAL REGIONAL OFFICE
Reviewed by: _____	
Date Reviewed: _____	

Applicant: Liberty Mining, Inc.

Application Number: KITT-04-08

This record of decision was made by a majority of the board at an open public meeting of the Kittitas County Water Conservancy Board held on January 3, 2005.

☒ **Approval:** The (board name) Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on 1/3/05 and submits this record of decision and report of examination to the Department of Ecology for final review.

☐ **Denial:** The (board name) Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on _____ and submits this record of decision to the Department of Ecology for final review.

Signed:

[Signature]
Tom Chini, Chair
Kittitas County Water Conservancy Board

Date: 1/3/05

Approve	<input checked="" type="checkbox"/>
Deny	<input type="checkbox"/>
Abstain	<input type="checkbox"/>
Recuse	<input type="checkbox"/>
Other	<input type="checkbox"/>

Mary Burke, Board Member
Kittitas County Water Conservancy Board

Date: _____

Approve	<input type="checkbox"/>
Deny	<input type="checkbox"/>
Abstain	<input checked="" type="checkbox"/>
Recuse	<input type="checkbox"/>
Other	<input type="checkbox"/>

Pursuant to conflict of interest

[Signature]
Pat Deneen, Board Member
Kittitas County Water Conservancy Board

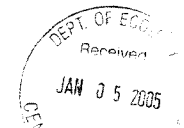
Date: 1/3/05

Approve	<input checked="" type="checkbox"/>
Deny	<input type="checkbox"/>
Abstain	<input type="checkbox"/>
Recuse	<input type="checkbox"/>
Other	<input type="checkbox"/>

Mailed to the Department of Ecology Central Regional Office of Ecology, and other interested parties on _____.

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(Board Name)
WATER CONSERVANCY BOARD
Application for Change/TransferReport of Examination
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

<input checked="" type="checkbox"/> Surface Water	<input type="checkbox"/> Ground Water		
DATE APPLICATION RECEIVED 2/24/04 amendment-8/9/04	WATER RIGHT DOCUMENT NUMBER (i.e., claim, permit, certificate, etc.) pm of 06626	WATER RIGHT PRIORITY DATE June 6, 1886	BOARD-ASSIGNED CHANGE APPLICATION NUMBER KITT-04-08

NAME
Liberty Mining and Exploration, Inc.
ADDRESS (STREET)
P.O. Box 765(CITY)
Cle Elum(STATE)
WA(ZIP CODE)
98922

Changes Proposed: ☐ Change purpose ☐ Add purpose ☒ Change point of diversion/withdrawal
☐ Add point of diversion/withdrawal ☒ Change place of use ☐ Other (Temporary, Trust, Interties, etc.)

SEPA

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt ☐ Not exempt

DECISION HISTORICAL SUMMARY**Existing Right (Tentative Determination)**

MAXIMUM CUB FT/ SECOND .10 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 4 non consumptive	TYPE OF USE, PERIOD OF USE Mining (March 1 – November 30) annually				
SOURCE Swauk Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO.	¼ SE	¼ SE	SECTION 3	TOWNSHIP N. 20	RANGE 17	WRIA	COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED Existing place of use SE ¼, SE ¼ of Section 3, Township 20, Range 17 EWM,							
PARCEL NO.	¼ SE	¼ SE	SECTION 3	TOWNSHIP N. 20	RANGE 17 EWM		

Proposed Use

MAXIMUM CUB FT/ SECOND 20 gpm	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 22.54	TYPE OF USE, PERIOD OF USE Mining (March 1-November 30) annually				
SOURCE Swauk Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO.	¼ SW	¼ NE	SECTION 10	TOWNSHIP N. 20	RANGE 17 EWM	WRIA	COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED The Yellowstone Placer Claim, Yellowstone Fractional Claim located within the SW ¼ of NE ¼ of Section 10, Township 20, Range 17 EWM. See attached Exhibit A geological survey Yellowstone Placer Claim, Yellowstone Fractional Claim.							
PARCEL NO.	¼ SE	¼ NE	SECTION 10	TOWNSHIP N. 20	RANGE 17 EWM		

Board's Decision on the Application

MAXIMUM CUB FT/ SECOND 10	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 22.54	TYPE OF USE, PERIOD OF USE Mining, non-consumptive (March 1 – November 30) annually				
SOURCE Swauk Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO.	¼ SW	¼ NE	SECTION 10	TOWNSHIP N. 20	RANGE 17 EWM	WRIA	COUNTY.
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED The Yellowstone Placer Claim, Yellowstone Fractional Claim located within the SW ¼ of NE ¼ of Section 10, Township 20, Range 17 EWM. See attached Exhibit A geological survey Yellowstone Placer Claim, Yellowstone Fractional Claim.							
PARCEL NO.	¼ SW	¼ NE	SECTION 10	TOWNSHIP N. 20	RANGE 17 EWM		

DESCRIPTION OF PROPOSED WORKS

Pump to a draw from Swauk Creek to wash racks, etc., discharging back into Swauk Creek.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: February 1, 2005	COMPLETE PROJECT BY THIS DATE: June 1, 2005	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:
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REPORT

See WAC 173-153-130 - The following sections may be expanded onto additional pages.

BACKGROUND

The applicant's water right was examined and confirmed under Court #06626 in the matter of Ecology v. Acquavella et. al. Yakima County Superior Court Cause #77-2-01484-5. That matter adjudicated a right to .10 cubic feet per second non-consumptive unlimited use for mining from March 1 through November 30, each year from Williams Creek with a priority date of June 6, 1886.

Subsequent thereto the owner of that claim, Lavinol, Inc., changed the point of diversion from Williams Creek to Swauk Creek under KITT - II-03.

On February 24, 2004, the applicant filed application number KITT-04-08 with the Kittitas County Water Conservancy Board, and on August 9, 2004, filed an amendment of said application.

These applications dealt with a portion of the Lavinol water right 06626, 20 gpm for non-consumptive mining purposes to be applied to the applicants Yellowstone Placer Claim and Yellowstone Fractional Claim, both owned by Liberty Mining and Exploration.

The board reviewed the criteria of the State Environmental Policy Act (SEPA) and found the application does not have any probable, significant, or adverse environmental impacts. The use is non-consumptive and the water will be returned to the source almost immediately upon its application to the mining operation which is used simply to separate the mining particles from the earth. Therefore, under RCW 43.21C et. seq. an environmental impact statement is not required in regards to this application.

The previous change decisions in association with this water right have been noted above in regards to Lavinol's change of point of diversion from Williams Creek to Swauk Creek which matches this applicant's identification of previous point of diversion.

Under RCW 90.080 and WAC 173-153, the Kittitas County Water Conservancy Board is permitted to change an existing water right. Applications submitted to the Board are reviewed under the same standards as changes and transfers submitted to the Department of Ecology; RCW 90.80.070 and 080. the board's findings and conclusions are reflected below.

COMMENTS AND PROTESTS

The Board took testimony of Richard T. Cole, attorney for applicant, Tony Cebe, officer and principal of Lavinol, Inc., the owner of the water right, and James Slade, the principal in Liberty Mining and Exploration. All parties spoke in favor of the proposed change and pointed out that the use was non-consumptive and posed no harm to any existing water rights. There was no testimony received in opposition or against the proposed change of point of diversion or change of point of use.

There were no written comments received other than those in association with the application. There were no issues raised in regards to any negative impacts of the proposed change of the point of diversion and point of use as reflected in the application and amended application of which the Board was aware or which was brought up by any party.

The applicant published the Notice of both the original application and the amended application in the Ellensburg Daily Record, the last publication subsequent to the amended application publication were on September 22 and September 28, 2004. The Board received no written comments adverse to the application for change of point of use and change of place of diversion in regards to this non-consumptive mining use of water.

INVESTIGATION

The Board investigated the request for a change of point of diversion and change of place of use as reflected in the amended application and made a physical inspection of the proposed points of diversion and place of use in the Liberty area of Kittitas County off Highway 97 between Cle Elum and Wenatchee, also known as the Blewett Pass Highway. The Board inspected both the present point of diversion and the proposed point of diversion as well as the proposed place of use and found the physical environment consistent with the representations made in the application and as presented by all parties.

The water rights associated with the current and proposed diversion are the same water rights affirmed by the Acquavella matter in the Subbasin 4 (Swauk Creek) and has been referred to by the Court in an amended order incorporated into the Conditional Final Order for Subbasin 4 (Swauk) confirming to Lavinol, Inc., .10 cfs non-consumptive use, March 1 through November 30.

There will be no adverse effect on any existing water rights and the in stream flows will not be affected by the non-consumptive mining use. The change of the point of diversion and place of use will not affect the total water quantity available within Swauk Creek to any measurable effect whatsoever based upon the type of use which returns all of the water to the creek within a short distance from its point of diversion. The proposed place of use and proposed point of diversion will not affect any other water rights and because it is non-consumptive will not affect Swauk Creek. The investigation reveals that the existing water rights have not been relinquished or abandoned due to non-use. The owner, Lavinol, has continually used the water right in the manner consistent with the guidelines and requirements of the Acquavella court, and as represented by the court's findings therein.

There was no geologic, hydrologic, or other scientific investigation that was necessary to confirm the Board's conclusions.

Continued

The board finds that a valid water right exists in the full measure as originally claimed by Lavinol, Inc., and as represented by claim #06626 and that no portion of the right has been relinquished or abandoned.

CONCLUSIONS

Conclusion 1: A valid water right exists for Lavinol, Inc., the owner of the water right for .10 cfs non-consumptive use within the southeast quarter of the southeast quarter of Section 3, Township 20 North, Range 17 E.W.M., Kittitas County, Washington.

Conclusion 2: There has been no relinquishment or abandonment of this water right.

Conclusion 3: There was no necessity for a hydrologic analysis because the use is non-consumptive and the change of the point of diversion within Swauk Creek does not affect, because of its non-consumptive use, any of the existing water rights in Swauk Creek.

Conclusion 4: The board finds that the water right has been used and is appropriate and that there were no protests or objections to the water right and therefore the water right is found to be authentic and existing. The proposed transfer of a portion of this water right to a new point of diversion and new place use will not impose upon any existing water rights of other parties.

Conclusion 5: The proposed change of place of diversion is authorized pursuant to law and is not detrimental to the public interest.

Conclusion 6: The proposed change of place of use is authorized pursuant to law and will not impose any detriment to the public nor affect any existing water rights.

Conclusion 7: The Board determines that the proposed change of the point of diversion and place of use is appropriate and should be granted.

RECOMMENDATIONS

The applicant's request for a change of point of diversion from the southeast quarter of the southeast quarter of Section 3, Township 20 North, Range 17 E.W.M. to a different point on the same source within the southwest quarter of the northeast quarter of Section 10, Township 20 North, Range 17 E.W.M. should be approved. The applicant's request for change of place of use from the southeast quarter of the southeast quarter of Section 3, Township 20 North, Range 17 E.W.M. Kittitas County to the southeast quarter of the northeast quarter of Section 10, Township 20 North, Range 17 E.W.M. is appropriate and should be approved.

The Board finds that the proposed change of the point of diversion and place of use is consistent with the public interest and will not affect or impair existing water rights nor will it be detrimental to the public interest. It is in the best interest of the applicant and the State that these changes of the place of use and point of diversion be approved.

PROVISIONS AND CONDITIONS

There are no conditions or limitations recommended as a part of this approved change of point of diversion or place of use other than the quantity of diversion as set forth in the application and the period of use as also reflected therein.

There are no adverse effects of the project as proposed.

The applicant should complete the change of point of diversion as soon as reasonably possible and the applicant is not permitted to proceed to act on the proposal until Ecology makes a final decision affirming in whole or in part the Board's recommendations as contained herein.

Signed at Ellensburg, Washington

This 3rd day of January, 2005



Tom Chini

Kittitas County Water Conservancy Board

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For attachments not included or for more information please contact:

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